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No. 39

In the Supreme Court of the United States

OCTOBER TERM, 1952

WILLIAM BAUMET, PETITIONER

v.

UNITED STATES OF AMERICA, ET AL.

ON WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SECOND CIRCUIT

BRIEF FOR THE UNITED STATES

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OPINIONS BELOW

The opinion of the United States District Court for the Southern District of New York (A. 1)[1] is reported at 81 F. Supp. 1012. The opinion of that Court dated November 3, 1950 (A. 10) is unreported. The opinions of the Court of Appeals (A. 7, 25) are reported at 177 F. 2d 806, certiorari denied, 339 U. S. 923, 973, and 191 F. 2d 194.

[1] The record below has not been printed. The opinions of the courts below have been printed separately as an Appendix to this brief. The references "(A.)" in this brief are to this Appendix.

JURISDICTION

The judgment of the Court of Appeals was entered on July 23, 1951 (A. 34). The petition for a writ of certiorari, filed on November 15, 1951, was granted on April 21, 1952. The jurisdiction of this Court rests upon 28 U. S. C. 1254 (1).

QUESTIONS PRESENTED

1. Whether Section 602 of the National Service Life Insurance Act, which conditions a beneficiary's rights "upon his or her being alive to receive * * * payments" and prohibits payments "to the heirs or legal representatives * * * of any beneficiary", precludes payments to the legal representative of a beneficiary who survived the insured but died before receiving any of the proceeds of the policy.

2. Whether the natural father of the insured, who was succeeded in the paternal relationship by an uncle standing *in loco parentis* to the insured, may be regarded, upon the death of the uncle, as a parent "who last bore that relationship" within the meaning of Section 602 (h) (3) (c).[2]

STATUTES INVOLVED

The pertinent statutory provisions are set

[2] The petitioner raises other questions which relate only to the conduct of the trial in this case, and upon which the United States takes no position.

forth in Appendix A to the Government's brief in *United States* v. *Clara Belle Henning, et al.*, No. 10, this Term, to be argued immediately preceeding the instant case.

STATEMENT

This suit is based upon conflicting claims to the proceeds of a National Service Life Insurance policy in the amount of $10,000 issued to William Baumet, Jr. (A. 16). At the time of the insured's death, on October 26, 1942, his uncle, John J. Peters was the designated beneficiary of his policy (A. 1, 16–17). After the insured's death, his natural father, petitioner here, and his uncle filed claims with the Veterans Administration for the insurance benefits (A. 1). The Administrator decided in favor of the uncle as a person standing *in loco parentis* to the insured (A. 1). Thereafter, the father instituted this action against the United States to recover the proceeds of the policy; the uncle intervened and filed a cross claim (A. 2).

Before the action came to trial, the uncle died and his widow, Julie Peters, filed a motion to be substituted as executrix of his estate (A. 2). The district court held that Section 602 (i) and (j) of the National Service Life Insurance Act of 1940 prohibited payments to the estate of a beneficiary and denied the motion of the executrix for substitution (A. 6). This decision was reversed by the Court of Appeals on the ground that a beneficiary's right to installments vested if he was alive

to receive them, whether or not he in fact received them, and therefore passed to his estate (A. 9).

Upon the trial following this reversal, Julie Peters, in addition to claiming as executrix the installments which matured before her husband's death, also claimed subsequent installments individually as a person standing *in loco parentis* to the insured (A. 23, 27). At the conclusion of the trial, the district court made findings which may be summarized as follows (A. 10–15):

Some five years after the insured was born in 1920, his mother left her husband and took the insured to live with her (A. 10). His parents were divorced in 1927, and he continued to live with his mother until her death in 1936 when he came to live with his father (A. 10–11). The insured's mother had left an insurance fund of some $1,700.00 of which his father was appointed general guardian (A. 11). In September 1937, the insured entered the University of Wisconsin, and in November 1938, without notifying his father, left college for Florida (A. 11–12). At the insured's request, the Florida police notified his uncle, John J. Peters, who provided funds for his return (A. 12). Upon his return, he made his home with his uncle and aunt who assumed a parental role toward him (A. 12–16).

After the father's administration of the trust fund had been questioned, a conference was held in December 1938, attended by the father, the insured, his uncle, and attorneys, at which the

father made a contribution to the fund, then entrusted to the uncle, and resigned as his son's guardian (A. 12–13). After this meeting, the father "never saw his son again and took no measures to look for or after him in any respect whatever and manifested no interest in his career * * *. His conduct constituted an abandonment of his son" (A. 13).

The insured returned to Wisconsin University in 1939 and, while his tuition for this year was paid out of the trust fund, other funds were supplied by his aunt and uncle (A. 14). In June 1941, at the end of the school year, he entered the naval reserve (A. 14–15). From the time he entered the service until his death, he always reported John J. Peters as his next of kin and his adopted father, and the address of John and Julie Peters as his home (A. 15–16). In his application for National Service Life Insurance, he listed his uncle as an adopted father, and designated him as beneficiary of his insurance policy (A. 16–17).

The district court found that the insured's conduct "is consonant only with an understanding on his part that they occupied the estate and position of his parents and that they on their part intended to establish and maintain that relationship to him. They were in every sense after 1938 *in loco parentis* to him" (A. 17–18). The district court concluded as a matter of law that Julie Peters was entitled, as executrix, to the sums accrued and unpaid during the life of John Peters,

and, as a person standing *in loco parentis*, to all sums accruing on the policy after his death (A. 18).

The court of appeals affirmed the district court's finding that John and Julie Peters stood *in loco parentis* (A. 39), and held that after the death of the designated beneficiary, John Peters, his wife, Julie Peters, was entitled to the proceeds of the policy to the exclusion of his natural father, petitioner here (A. 40–41). It ruled that only the parent "who last bore that relationship" is within the limited class of non-designated statutory beneficiaries and that since John Peters last bore the relationship of father to the insured, that the natural father, William Baumet, "cannot satisfy the statutory requirement" (A. 40–41).

ARGUMENT

The issues here involved are virtually identical with those presented in *United States* v. *Clara Belle Henning*, No. 10, this Term, No. 456, last Term. The arguments made in the Government's brief in that case are directly pertinent and will not be repeated. We wish to add only that the Congressional policy of limiting classes of beneficiaries and prohibiting payments to estates has its roots in comparable principles incorporated into World War I war risk insurance legislation. The National Service Life Insurance Act of 1940, as amended, as well as the Servicemen's Indem-

nity Act of 1951, were enacted against the background of this earlier legislation and in the light of both administrative and judicial interpretations giving clear effect to the expressed statutory policy of permitting payments only to specified beneficiaries and denying them to estates. See *United States* v. *Lee*, 101 F. 2d 472 (C. A. 6); *American Nat. Bank & Trust Co.* v. *United States*, 134 F. 2d 674 (C. A. D. C.). Compare *Northwestern Mut. Life Ins. Co.* v. *Fink*, 118 F. 2d 761 (C. A. 6).

The decisions in the *Lee* and *American Nat. Bank* cases not only rule against paying benefits to decedent's estates, but recount the legislative and administrative background for this result. In the *Lee* case, dealing with revived war risk insurance, the court stated (p. 474):

> This history shows that it was the clear intent of the Congress that only living persons were to be beneficiaries, and that no estate should be a beneficiary under this section.

In the *American Nat. Bank* case, dealing with a similar situation, the court observed (p. 678):

> The purpose to restrict payment to the persons designated and, by the same token, to exclude participation by any estate hardly could be stated more clearly. And this policy has been carried out consistently in the Bureau's administrative application of the section.

In these circumstances, the statutory language under consideration here, expressly forbidding payments to estates, must be deemed to have been used deliberately and should be applied in the precise terms which Congress used.[3]

Moreover, the fact that the limitation of benefits to a narrowly defined class (to whom the serviceman might owe some obligation of support) would at times result in no insurance payments was clearly understood as early as 1917. See Hearings before the Senate Subcommittee of the Committee on Finance on H. R. 5723, 65th Cong., 1st Sess. (later enacted as the Act of October 6, 1917, Public Law 90, 65th Cong.), August 17, 1917, p. 78, September 18, 1917, pp. 23, 44–45, 93; see also Hearings before the House Committee on Interstate and Foreign Commerce on H. R. 11659, 65th Cong., 2d sess. (later enacted as Public Law 175, 65th Cong., June 25, 1918), May 1, 1918, pp. 16–17.[4]

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[3] This policy against paying insurance benefits to a deceased beneficiary's estate is consistent with 38 U. S. C. 454a, made a part of the National Service Life Insurance Act by 38 U. S. C. 816, which, as noted by this Court in *Wissner* v. *Wissner*, 338 U. S. 655, 659, exempted payments to named beneficiaries from the claims of creditors.

[4] It is significant that in the transition to a peacetime insurance basis after World War I, as under the National Service Life Insurance Act, the permissible class of beneficiaries was enlarged and specific provision was made for the payment of insurance proceeds to estates. Compare Section 402 of Public Law 90, 65th Cong. (40 Stat. 409, 410), as amended by Public Law 175, 65th Cong. (40 Stat. 609, 615), with Public Law 104, 66th Cong. (41 Stat. 376), Sections 14, 15, and 16.

CONCLUSION

For the foregoing reasons, and those stated in the Brief for the United States in *United States* v. *Henning, supra,* it is respectfully submitted that all insurance proceeds should be held payable to the insured's aunt, Julie Peters, not as the executrix of the estate of John J. Peters, but as one who stood *in loco parentis* to the insured.

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